

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Kermit Robinson on 03/26/10.

2. The application has been amended as follows:

In the claims:

8. (Currently Amended) [A computer program product] A computer-readable storage medium having computer-readable code thereon, comprising instructions, which when executed in a computing device are effective to cause the computing device to measure an exercise level of a user by carrying out the steps of:

receiving a measurement of distance travelled by a user in a given time, said time being sufficiently large to ensure that the user is working at the maximum of his or her aerobic capacity,

determining from said values of distance and time an aerobic capacity, and outputting a measure of exercise level to the user based on the calculated aerobic capacity,

wherein the aerobic capacity conforms to the relationship expressed as:

$$VO2\text{max} = a + bx + c(x^2)$$

wherein $VO2\text{max}$ is the maximal oxygen consumption of a user,

wherein a , b and c are non-zero constants, and

wherein x is a measure of distance per unit time.

9. (Currently Amended) [The computer program product] The computer-readable storage medium as claimed in claim 8, [when provided as a piece of software installed on] wherein the computing device comprises a mobile telecommunications device, wherein the computer-readable storage medium comprises at least one of a piece of software installed on the computer-readable storage medium, or a piece of software downloaded to the computer-readable medium. [a piece of software for download to a mobile telecommunications device, an electronic circuit encoding the aforesaid instructions, an electrical signal encoding the aforesaid instructions, a magnetic, optical or other physical program carrier.]

16. (Currently Amended) [A computer program product] A computer-readable storage medium having computer-readable code thereon, comprising instructions, which when executed in a computing device are effective to cause the computing device to measure an exercise level of a user by carrying out the steps of:

receiving data indicative of the speed or position of a user using a global positioning system (GPS) module, and

calculating, from said position or speed, an exercise level of the user in terms of aerobic capacity, wherein the aerobic capacity conforms to the relationship expressed as:

$$VO2\text{max} = a + bx + c(x^2)$$

wherein VO2max is the maximal oxygen consumption of a user,
wherein a, b and c are non-zero constants, and
wherein x is a measure of distance per unit time.

Allowable Subject Matter

3. Claims 1-16 are allowed.

The following is an examiner's statement of reasons for allowance:

The instant application is directed to a device for measuring the aerobic capacity of a subject. Each independent claim identifies the uniquely distinct combination of features including "calculated aerobic capacity, wherein the aerobic capacity conforms to the relationship expressed as; $VO2\text{max} = a + bx + c(x^2)$, wherein VO2max is the maximal oxygen consumption of a user, wherein a, b and c are non-zero constants, and wherein x is a measure of distance per unit time". This patentable distinction is included in all independent claims 1, 7, 8, 10, 15, and 16. The closest prior art, Acres (US 2005/0070809) and Kaufman (US 2002/0028730). Acres discloses system for regulating exercise and exercise network, and Kaufman discloses audible electronic exercise monitor. The references, either singularly or in combination, fail to anticipate or render the above limitations obvious.

4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phung Nguyen whose telephone number is 571-272-2968. The examiner can normally be reached on Monday to Friday from 8:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel J. Wu, can be reached on 571-272-2964. The fax phone number for this Group is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 571-272-2600.

/PHUNG NGUYEN/

Primary Examiner, Art Unit 2612

Date: March 26, 2010

Application/Control Number: 10/599,752
Art Unit: 2612

Page 6